

REMARKS

Application Amendments

Claims 1, 2 and 18 have been amended by way of the present amendment. Support for these amendments can be found in the specification at pages 10, lines 6-25 and 11, lines 1-12. No new matter has been added and no additional claim fee is believed to be due at this time.

The Rejections under 35 USC §102/§103

Bara et al., US Patent No. 5,637,291

Claims 1-16, and 18 are rejected under 35 USC §102(b) as being anticipated by Bara et al. The Examiner states Bara discloses hair care and skin care compositions, for example eye line care, tinted gel compositions etc., comprising hollow particles of an expanded copolymer of vinylidene chloride and acrylonitrile, or vinylidene chloride, methacrylate and acrylonitrile, wherein the internal cavity is filled with a gas or a hydrocarbon such as isobutene all of which are also described in the instant application. The Examiner also states that Bara discloses the particle size, and density as claimed by the present claims 3-4 and that it is implicit from the teachings of Bara that the polymer particles possess a thermoplastic wall and thus meet the limits of claims 5-9. Further, it is the Examiner's position that the particles of Bara meet the claim limitation of claims 10-12 because Bara uses the same polymer for the preparation of the particles, therefore the permeability and the property of the particles to expand upon heating is inherent. Applicant respectfully traverses the Examiner's rejection based on the comments below.

As currently amended, Applicant's claimed invention requires a hydrophobically modified water-swallowable or water soluble polymer. None of the polymers disclosed in Bara fall within Applicant's described hydrophobically modified polymers and therefore the reference is not anticipatory. Bara specifically indicates at col. 3 line 53 that the gelling agent for the aqueous phase is "especially a hydrophilic gelling agent" (emphasis added). Alternatively, Applicant's invention is also not obvious in view of Bara. Applicant's claimed invention is intended as a leave-in conditioning product that provides more volume and lift to the hair. The inclusion of microspheres in Bara is to ensure the dispersion of an oily phase within an aqueous phase and not to increase hair to hair interactions as in the present invention. In contrast Bara states as an intended use, "hair smoothing" which would result from composition having a higher percentage of oil and is opposite the intention of Applicant's claimed invention. While Bara discloses that the oily phase can be present in an amount from 0.1-30%, all of the exemplified compositions contain at least 5% of an oily phase. One of skill in the art reading Bara would not expect these compositions to form films as required by the instant invention because of the high levels of oil. Accordingly, claims 1-16, and 18, as amended, are novel and unobvious over the prior art of record.

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Appl. No. 09/821,942
Amdt. Dated March 26, 2003
Reply to Office action of Dec. 26, 2002

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Claims 17, and 20-22 are rejected under 35 USC §103(a) as being unpatentable over Bara et al. Applicant respectfully traverses this rejection based on the comments below.

Applicant asserts that the arguments presented above also apply to the present rejection since the polymers now claimed in the independent claims from which these claims depend are not disclosed in the cited reference. Further there is no suggestion in Bara that the compositions disclosed therein would provide added volume and lift to hair if applied to and left in the hair. One of skill in the art would have no motivation to use the compositions in Bara in the way Applicant's compositions are intended as there is no suggestion to do so in the cited reference. Additionally, Bara fails to address the issue of hair volume and leave in products at all. Therefore, claims 17, and 20-22 are novel and unobvious over the prior art of record.

Conclusion

In light of the amendments and remarks presented herein, Applicants' respectfully submit that the Claims 1-18, and 20-22 are allowable over the prior art of record or any combination thereof. Reconsideration is respectfully requested. In the event that issues remain prior to allowance of the noted claims, then the Examiner is invited to call Applicants' undersigned attorney to discuss any remaining issues.

Respectfully submitted,

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March 26, 2003
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